

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2035

Introduced by Assembly Member Bradford

February 23, 2012

An act to amend Section 10072 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2035, as amended, Bradford. Electronic benefits transfer cards: skimming.

Existing law, administered by the State Department of Social Services, provides for the establishment of a statewide electronic benefits transfer (EBT) system for the purpose of providing financial and food assistance benefits to needy Californians. Under existing law, a recipient does not incur any loss of electronic benefits if his or her EBT card or personal identification number has been lost or stolen.

This bill additionally would provide that a recipient would not incur any loss of electronic benefits stolen through the practice of skimming, as defined.

By increasing duties of counties in administering public social services programs, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) State law provides relief for CalWORKs parents and
3 recipients, to restore their benefits when stolen.

4 (b) However, no similar remedy exists when the benefits are
5 delivered in electronic form, via an electronic benefits transfer
6 (EBT) card, and the benefits have been stolen through the practice
7 of skimming.

8 (c) Countless families that depend on the basic needs grants
9 CalWORKs provides are vulnerable to electronic crimes, and
10 currently have no where to turn.

11 (d) Because of this inequity, a petition for writ of mandate,
12 *Carpio v. Lightbourne* (Case No. BS135127) was filed in the Los
13 Angeles County Superior Court in December 2011, to address a
14 solution for families that have been victims of skimming.

15 (e) It is therefore the intent of the Legislature in enacting this
16 act to address the problem of electronic theft of public benefits
17 that is at issue in *Carpio v. Lightbourne*.

18 SEC. 2. Section 10072 of the Welfare and Institutions Code is
19 amended to read:

20 10072. The electronic benefits transfer system required by this
21 chapter shall be designed to do, but not be limited to, all of the
22 following:

23 (a) To the extent permitted by federal law and the rules of the
24 program providing the benefits, recipients who are required to
25 receive their benefits using an electronic benefits transfer system
26 shall be permitted to gain access to the benefits in any part of the
27 state where electronic benefits transfers are accepted. All electronic
28 benefits transfer systems in this state shall be designed to allow
29 recipients to gain access to their benefits by using every other
30 electronic benefits transfer system.

31 (b) To the maximum extent feasible, electronic benefits transfer
32 systems shall be designed to be compatible with the electronic
33 benefits transfer systems in other states.

34 (c) All reasonable measures shall be taken in order to ensure
35 that recipients have access to electronically issued benefits through

1 systems such as automated teller machines, point-of-sale devices,
2 or other devices that accept electronic benefits transfer transactions.
3 Benefits provided under Chapter 2 (commencing with Section
4 11200) of Part 3 shall be staggered over a period of three calendar
5 days, unless a county requests a waiver from the department and
6 the waiver is approved, or in cases of hardship pursuant to
7 subdivision (l).

8 (d) The system shall provide for reasonable access to benefits
9 to recipients who demonstrate an inability to use an electronic
10 benefits transfer card or other aspect of the system because of
11 disability, language, lack of access, or other barrier. These
12 alternative methods shall conform to the requirements of the
13 Americans with Disabilities Act (42 U.S.C. Sec. 12101, et seq.),
14 including reasonable accommodations for recipients who, because
15 of physical or mental disabilities, are unable to operate or otherwise
16 make effective use of the electronic benefits transfer system.

17 (e) The system shall permit a recipient the option to choose a
18 personal identification number, also known as a “pin” number, to
19 assist the recipient to remember his or her number in order to allow
20 access to benefits. Whenever an institution, authorized
21 representative, or other third party not part of the recipient
22 household or assistance unit has been issued an electronic benefits
23 transfer card, either in lieu of, or in addition to, the recipient, the
24 third party shall have a separate card and personal identification
25 number. At the option of the recipient, he or she may designate
26 whether restrictions apply to the third party’s access to the
27 recipient’s benefits. At the option of the recipient head of
28 household or assistance unit, the county shall provide one electronic
29 benefits transfer card to each adult member to enable them to
30 access benefits.

31 (f) The system shall have a 24-hour per day toll-free telephone
32 hotline for the reporting of lost or stolen cards and that will provide
33 recipients with information on how to have the card and personal
34 identification number replaced.

35 (g) (1) A recipient shall not incur any loss of electronic benefits
36 after reporting that his or her electronic benefits transfer card or
37 personal identification number has been lost or stolen, ~~or that he~~
38 ~~or she is a victim of skimming, as defined in paragraph (2).~~ The
39 system shall provide for the prompt replacement of lost or stolen
40 electronic benefits transfer cards and personal identification

1 numbers. Electronic benefits for which the case was determined
2 eligible and that were not withdrawn by transactions using an
3 authorized personal identification number for the account shall
4 also be promptly replaced.

5 *(2) A recipient shall not incur any loss of electronic benefits*
6 *that are removed from his or her electronic benefits transfer*
7 *account through skimming, as defined in paragraph (3). Electronic*
8 *benefits withdrawn by skimming shall be promptly replaced, in*
9 *accordance with Section 29853.5 of the Government Code, after*
10 *the recipient reports the loss.*

11 ~~(2)~~
12 (3) The State Department of Social Services shall establish a
13 protocol for ~~reporting recipients to report~~ skimming that minimizes
14 the burden on ~~a, and ensures prompt payment of benefits to,~~
15 recipients. For purposes of this section, “skimming” means a form
16 of ~~identity~~ theft by which a recipient’s EBT account information,
17 or ~~“pin”~~ “PIN” number, or both, are ~~electronically~~ accessed by a
18 ~~third party~~ an unauthorized person, who uses that information to
19 unlawfully remove funds from the recipient’s account.

20 (h) Electronic benefits transfer system consumers shall be
21 informed on how to use electronic benefits transfer cards and how
22 to protect them from misuse.

23 (i) Procedures shall be developed for error resolution.

24 (j) No fee shall be charged by the state, a county, or an electronic
25 benefits processor certified by the state to retailers participating
26 in the electronic benefits transfer system.

27 (k) Except for CalFresh transactions, a recipient may be charged
28 a fee, not to exceed the amount allowed by applicable state and
29 federal law and customarily charged to other customers, for cash
30 withdrawal transactions that exceed four per month.

31 (l) A county shall exempt an individual from the three-day
32 staggering requirement under subdivision (c) on a case-by-case
33 basis for hardship. Hardship includes, but is not limited to, the
34 incurrence of late charges on an individual’s housing payments.

35 SEC. 3. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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